

The Government of the Republic of the Union of Myanmar

Ministry of Planning, Finance and Industry

Internal Revenue Department

Public Ruling

No. 1/2020

Nay Pyi Taw, 3rd Waxing of Tabodwe, 1381 ME

January 27, 2020

**Public Ruling for Assessment of Tax, Imposition of Penalties and Criminal Proceedings
in the Transitional Period**

Introduction

1. The Tax Administration Law was promulgated by the Union Parliament as law number 20 of 2019 and took effect from October 1, 2019. Therefore, to provide clarity and guidance to taxation staff and the general public in the assessment of tax, imposition of penalties and criminal proceedings in the transitional period during which the administration of taxes has started to be done under the Tax Administration Law instead of other relevant tax laws, the Director General of the Internal Revenue Department, exercising the power conferred under section 11(a) of the Tax Administration Law, issues this public ruling.

2. The public ruling is binding on the Internal Revenue Department under section 11(b) of the Tax Administration Law.

Matters related to

3. This is a clarification on how the Internal Revenue Department is going to apply the provisions whether under an existing tax legislation or the Tax Administration Law

in the transitional period during which the Tax Administration Law has started to take effect, in matters related to assessment of taxes, imposition of penalties and criminal proceedings.

Relevant provisions

4. The public ruling is related to "Assessments" under Part V, "Penalties" under Part X and "Criminal Proceedings, Offences and Punishments" under Part XI of the Tax Administration Law.

Public Ruling on the period of limitation for assessment of taxes

5. Regarding the period of limitation for assessment of taxes, an assessment or a reassessment may be made generally within three years after the end of the assessment year as provided in the Income Tax Law and the Commercial Tax Law, and within three years of the date on which the assessment decision is made as provided in the Specific Goods Tax Law. However, the provisions on the period of limitation for assessment of taxes under existing tax legislation have been overruled by the Tax Administration Law under section 84 since October 1, 2019 and the period of limitation for assessment of taxes as provided under section 29 of the Law is six years after the end of the tax period to which the assessment relates, during which a new assessment or a revised assessment may be made.

6. Therefore, although a new assessment or a revised assessment may be made generally within six years after the end of the tax period to which the assessment relates under the Tax Administration Law, assessments or reassessments for commercial and income taxes in FY2019-20 will be made within three years after the end of the assessment year, and those for specific goods tax will be made within three years of the date on which the assessment decision is made, as they have been done before, but it will be incrementally increased to four years in FY2020-21, five years in FY2021-22, and six years in FY2022-23 in order not to overburden taxpayers, to be fair for them and not

to negatively affect their interest in the transitional period. The plan is illustrated in the table below:

Table: Timeline for making assessments or revised assessments

| 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
|---------|---------|---------|---------|---------|---------|---------|
| ← | | | 3 years | | | |
| ← | | | | 4 years | | |
| ← | | | | | 5 years | |
| ← | | | | | | 6 years |

7. Offences involving doing of an act or failure to do an act committed before October 1, 2019 when the Tax Administration Law was not in force will be dealt with in accordance with provisions under relevant tax legislation and those committed on or after October 1, 2019 when the Tax Administration Law is in force will be dealt with in accordance with provisions under the Law.

8. Following examples are provided to make the public ruling more clearly understood:

(a) Example (1)

(i) **Case:** Company A filed the income tax return for 2016-17 income year in June 2017 in which it omitted some of its income. The Internal Revenue Department audited or the township revenue officer or a designated officer assessed the company in December 2019 when the Tax Administration Law

has taken effect and found that it underreported its income in the 2016-17 tax return.

(ii) ***Application of the ruling:*** Although the Internal Revenue Department discovered the offence committed by Company A after October 1, 2019 when the Tax Administration Law is in force, the act of offence was actually committed in the period when the Law was not in force yet so the penalty is to be imposed under the Income Tax Law to which the period relates.

(b) Example (2)

(i) ***Case:*** The same company in Example (1) failed to provide facilities and assistance to taxation staff in the process of auditing or assessment or collection done by the Internal Revenue Department.

(ii) ***Application of the ruling:*** The offence of failure to provide facilities and assistance by Company A was committed in the period when the Tax Administration Law was in force so the penalty is to be imposed under the Law.

(c) Example (3)

(i) ***Case.*** The Internal Revenue Department audited Company B in December, 2019 and detected that the company has failed to maintain documents related to 2018-19 income year which is from April 1, 2018 to March 31, 2019.

(ii) ***Application of the ruling:*** The offence of the Company B's failure to maintain or provide documents will be penalized under section 70 of the Tax Administration Law starting from October 1, 2019 until the date on which the company maintains documents and sends them to the Internal

Revenue Department or until the date on which the penalty is imposed, whichever comes earlier, by calculating the penalty on a daily basis. However, the company will not be penalized under the Tax Administration Law for its failure to maintain documents between April 1, 2019 and September 30, 2019.

(d) Example (4)

(i) **Case:** Company C is supposed to file the income tax return in the specified period from October 1, 2019 till December 31, 2019 for the income received in the six months period from April 1, 2019 till September 30, 2019. However, Company C filed the income tax return only in March 2020. Moreover, the company incorrectly reported in the return and underpaid tax.

(ii) **Application of the ruling:** Although the income period of Company C is before October 1, 2019, the offences of failure to file the return and making an incorrect statement occurred in the period when the Tax Administration Law was in force so the penalty is to be imposed under the Law.

(e) Example (5)

(i) **Case:** Company X has failed to file quarterly commercial tax returns for the first quarter (from April to June, 2019) and the second quarter (from July to September, 2019) for the six months period from April 1, 2019 to September 30, 2019. The filing period for the first quarter is July 2019 when the Tax Administration Law was not in force, and that for the second quarter is October 2019 when the Law was in force.

(ii) ***Application of the ruling.*** In the example, the offence for the failure to file the return for the first quarter would be penalized under the Commercial Tax Law and the failure to file the return for the second quarter under the Tax Administration Law. However, in order to apply a penalty rate more favorable to taxpayers, both offences of failure to file returns for two different periods will be penalized uniformly under the Tax Administration Law.

Public Ruling on criminal proceedings

9. Offences committed before October 1, 2019 when the Tax Administration Law was not in force are to be proceeded under relevant tax legislation whereas those committed on or after October 1, 2019 when the Tax Administration Law is in force are to be proceeded under the Law.

Effective date

10. The public ruling will take effect from October 1, 2019.

11. I hereby sign and publish the public ruling.

Sd/ xxxx

(Min Htut)

Director General

Ref: 1(2)/odg-1/IRD/2020 (1040)

Date: January 27, 2020

Distribution to:

- Myanmar Accountancy Council
- Director General, Printing and Publishing Department (With a request to publish)

the statement in Myanmar Gazette)

- All Deputy Director Generals, IRD
- All Directors of the Directorates of IRD
- Director, LTO (with an instruction to inform and explain to the relevant taxpayers)
- Directors, MTO 1, 2, 3, 4 and 5 (with an instruction to inform and explain to the respective taxpayers)
- All Heads of State/Regional Revenue Offices (with an instruction to inform and explain to the respective taxpayers)
- Head of the Union Territory Revenue Office, (with an instruction to inform and explain to the relevant taxpayers)
- Myanmar Institute of Certified Public Accountants (MICPA)
- Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI)

Copy to:

- Office copy
- Archive